

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10755 of 1996

with

CIVIL APPLICATION No 10050 of 1997

and

SPECIAL CIVIL APPLICATION No. 7817 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

DANABHAI KANABHAI

Versus

STATE OF GUJARAT

Appearance:

MR ASHOK K PADIA for Petitioners
MR P.G. DESAI, GOVERNMENT PLEADER for Respondent No. 1
MRS KETTY A MEHTA for Respondent No. 3
MR JS PATEL for Respondent No. 4
DS AFF. NOT FILED (R) for Respondent No.5

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 29/09/98

ORAL COMMON JUDGEMENT

1. These two petitions relate to the same issue in respect of common grievance. Each of the petitioners in two petitions is allottee of a plot admeasuring 25 sq. meters out of survey No. 881 of village Vejalpur in the city taluka and District Ahmedabad. These lands were

vested in the State under Urban Land (Ceiling and Regulations) Act and the plots have been allotted to the petitioners as a measure of providing land for housing to weaker sections of people. The allotment was made in February, 1992. The construction over these plots were to be carried out by Gujarat Housing Board. Six years gone by, but Housing Board has not been able to construct houses for the allottees on these plots. Reason being that the Government has allotted lands in its scheme for settling people like petitioners who are residing at slum but without any access to reach these plots. The land is inapproachable to be utilised by the allottees. Frustrated with the situation of having bestowed with the lands but without means to reach it and utilise for their purpose, these two petitions have been filed, seeking mandamus to respondents to provide the approach road to enable Housing Board to make construction over the plots as per the original plan.

2. The Housing Board in its reply has admitted that there is no approach road and it has been prevented on account of lack of approach road to implement the scheme for constructing the houses for the petitioners on the plots in question. The fact that these plots have been allotted to weaker section with a view that Housing Board shall construct houses for such allottees at low cost is admitted by State also. There is no approach road is also not in dispute.

3. In these circumstances, when the court after giving long rope for solving the problem, found the respondents insensitive to the issue, direction on 14th July, 1998 was made that suitable arrangement is to be made by the respondents to enable the petitioner to have access to their lands allotted in survey No. 881 in village Vejalpur on or before 31st August, 1998. The Secretary of the Government of Gujarat, Revenue Department, Secretary to the Government of Gujarat, Urban Development Department, Additional Collector and

Competent Authority under the ULC Act and the Chief Executive, AUDA were required remain present before the Court on next date of hearing if the direction is not carried out. At that time, only one petition was pending, namely, Spl. C.A.No.10075 of 1996 filed by four petitioners. Road was not constructed within the time fixed. The officers remained present in the court, and through their counsel made an offer to allot alternative lands at Godha village to the petitioners in lieu of plots at village Vejalpur. After showing initial willingness to accept the land, when it was realised by the petitioners that in all 33 persons are affected by lack of approach road at the plots at Vejalpur under the same transaction and a separate petition was filed on behalf of remaining 29 persons which was numbered as Spl. C.A. No. 7817 of 1998 to be placed at par with four persons on behalf of Spl. C.A. No. 10755/96 and it was stated that offer to the alternative land is acceptable only in case like offer is made to all the similarly situated persons. In response thereto, State Government did offer alternative plots to all the petitioners in both the petitions at village Dhragad or Chandkheda instead of at village Godha. After inspection of the site, the petitioners found that alternative offer at Chandkheda or Dhragad was in such a condition that the same could not be utilised by them for another four to five years without proper development taking place around it. In that circumstances, they expressed their unwillingness to accept alternative land at Dhragad or Chandkheda but decided to await for a while within which the respondents to provide approach road to already allotted plots.

4. In the circumstances, the court enquired from the respondents how much time they are likely to take in providing approach road to the plots allotted by State in their scheme to settle and rehabilitate persons of weaker sections. Despite efforts by learned Government Pleader, the offices of the various authorities could not respond with equal sensitivity to the problems. Officials of State Government states that State Government will take all necessary steps with promptitude to put at the disposal of Housing Board the approach road, on receiving the suggestion from AUDA, about the suitable land in the vicinity. No estimation of time was spelt out. The Chief Executive of AUDA present in the court took the stand that they cannot make even any advisory proposition for making the approach road de hors the final development plan which would take its own time and was unable to give an estimated time which AUDA is likely to take to finalise the final plan. It was expressed by the

Chief Executive that as an authority entrusted with the development of the area AUDA is not in a position even to give suggestion about the suitability of land which can be utilised for providing approach road to the existing plots and how much time for execution of such approach road will take. To say the least, the approach was too rigid and inflexible to show their total lack of insensitivity to resolve the problems. The stand taken by the AUDA was that it is incompetent to deal with any emergent situation in exercise of its authority even under direction of the State with reference to the existing provisions of the Act under which it has been constituted. An impression was given that it was not prepared to look at it as a problem which as a statutory functionary entrusted with the task of planned development for the benefit of people, it was its duty to resolve rather than look at if that people became less important but expression of authority became more essential.

5. Suffice to state that the Town Planning Act does not pack the development of the area in strait jacket constraints leaving no room for finding solution to the problems which arise in the course of implementing various schemes due to unforeseen circumstances, like the present one. Only to illustrate Section 40 of the Act clearly empowers the Appropriate Authority to make a scheme for any part of the area under it. The part of area need not be in hectares or multi sq. meters. It may be for dealing with a situation like this. Apart from the provision of Section 40, the State is not powerless to use its power to issue direction under Section 122 in the matters like this because it is a case where it must be upper most in the minds of the state to see that the scheme proposed by it must be implemented and not frustrated by non-cooperation of the authority constituted under the Act by its non-cooperative posture. The purpose of the Act is not to stultify the life and riddle the development by putting bottlenecks, obstacles or taking an attitude of no shift but is to find out ways and means to implement the scheme and achieve the objective for which the welfare state exists. It pains to see a welfare state stranded paralysed in its attempt to provide roof over the head to those whom it allotted a small piece of land admeasuring only 25 sq. meters who are staying in the street and are still awaiting the promised home and are told to be satisfied with a dream drifting to distance because of total noncooperation attitude on the part of those who are entrusted with the task of implementing such schemes for bettering the lot of such weaker section.

6. One reason betrayed during the course of hearing was that the area has now surrounding of a fairly developed societies of a few fortunate prosperous populace and these tiny roofs are likely to be a patch on velvet.

7. When the respondents have failed, the alternative is to issue mandamus to perform their duties which they are under an obligation to perform.

8. I, therefore, direct the respondents to provide approach road to the plots in question within a period of six months. The state shall identify the suitable land to provide access to these plots with minimum disturbance to other parties and ask the Town Planning Authority to consider its inclusion in its development plan and make its proposal to the State Government for that purpose. The Town Planning Authority or for that matter appropriate authority under the Act shall respond with promptitude within two weeks of receiving such request by making compliance thereof. The entire process of making a scheme for such small area and implementation by laying an approach road should be completed as far as possible within six months from today.

9. With the aforesaid direction, Rule is made absolute in Spl. C.A. No. 10755 of 1996 and in Spl. C.A. No. 7817 of 1998. The respondents shall bear the cost of these petitions which is quantified at Rs.10,000/-.

10. In view of the order passed in the main matter, no order on this Civil Application and the same stands disposed of accordingly. Notice is discharged.

p.n.nair